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In the Supreme Court of the United States

OCTOBER TERM, 1973

HENRY L. TOMOW, SR., ET AL.,

Petitioners,

vs.

MENOMINEE ENTERPRISES, INC., ET AL.,

Respondents,

and

N. E. ISAACSON & ASSOCIATES, INC.,

Respondent.

BRIEF OF RESPONDENT N. E. ISAACSON & ASSOCIATES, INC. IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

	PAGE
Introduction	1
Jurisdiction	1
Statement of Facts	2
General Background	2
Menominee Enterprises, Inc.	3-5
Menominee Common Stock & Voting Trust	5-6
Lakes of the Menominees	6-9
Present Action: Complaint and Supplemental Complaint	9-12
Trial Court's Interlocutory Judgment	13-14
Action by the Wisconsin Supreme Court	14
Subsequent Proceedings	14-15
Nature of Action	15-16
Reasons for Denying Petition for Writ of Certiorari	17
The Petition for a Writ of Certiorari fails to comply with Supreme Court Rule 23	17-18
Petitioners have failed to show the jurisdiction of the United States Supreme Court under 28 U.S.C. 1257(3)	18-25
Conclusion	25-27

PAGE

Appendices

A. Articles of Incorporation of Menominee Enterprises, Inc. ..... App. 1

B. Complaint ..... App. 7

C. Supplemental Complaint ..... App. 18

D. Menominee Common Stock & Voting Trust ..... App. 22

E. Final Judgment of Menominee County Circuit Court, September 7, 1973 ..... App. 34

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Respondent.

BRIEF OF RESPONDENT

INTRODUCTION

This Brief is submitted on behalf of the Respondent, N. E. Isaacson & Associates, Inc., in opposition to the Plaintiff's Petition for a Writ of Certiorari.

Respondent submits that the statement of facts set forth in the Petition is both incomplete and so general as to be misleading. We have, therefore, set forth a somewhat extensive statement of the facts of this case.

JURISDICTION

Respondent respectfully submits that Petitioners have failed to show jurisdiction in the United States Supreme Court under 28 U.S.C. Section 1257(3).

STATEMENT OF FACTS

General Background

By Act of June 17, 1954, Congress made provision for the "orderly termination of Federal supervision over the property and members of the Menominee Indian Tribe of Wisconsin."[1]

On December 12, 1957, the Official Roll of the Menominee Indian Tribe was closed in accordance with 25 U.S.C. sec. 893, and the number of Enrolled Menominees was established at 3,270.[2]

Termination of Federal supervision over the *property and members* of the Menominee Indian Tribe became effective April 30, 1961.

The Menominee Indian Tribe took its major step toward termination when the Tribe approved and adopted a comprehensive *Plan of Termination* on January 17, 1959.[3]

The Plan of Termination included, among other items, the Articles of Incorporation of Menominee Enterprises, Inc., and the Voting Trust Instrument establishing and governing the Menominee Common Stock & Voting Trust.[4]

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[1] P.L.399, c. 303, 68 Stat.250; 25 U.S.C. secs. 891-902; as amended by Acts of July 14, 1956, July 2, 1958, and September 8, 1960.

[2] Record Page 268; Pet. App. 61; U.S. Code Cong. and Adm. News, (1960), v.2, p.3467.

[3] Record Page 269; Pet. App. 62; Text of Resolution, Record Pages 937-939.

[4] Articles of Incorporation: Record Page 298; Res. App. 1-4; Voting Trust Instrument: Record Pages 302-306; Res. App. 22-23.

Menominee Enterprises, Inc.

Menominee Enterprises, Inc., is a private business, i.e., for-profit, corporation organized and existing under the laws of the State of Wisconsin.

According to its Articles, the purpose of Menominee Enterprises, Inc., "is to engage in any lawful activity" permitted by Wisconsin corporation law and, without limiting that general purpose, to "manage and operate all of the businesses and property, real and personal, transferred to the corporation by the United States of America, pursuant to Section 897, Tittle 25, U.S.C."[5]

By two deeds, both dated April 26, 1961, and both recorded September 10, 1961, in the Office of the Register of Deeds for Menominee County, Wisconsin, the United States of America conveyed to Menominee Enterprises, Inc., all of the land that, for practical purposes, previously constituted the Menominee Indian Reservation and that now constitutes Menominee County.[6]

Article XII of the Articles of Incorporation of Menominee Enterprises, Inc., contains the following provision governing the sale of land by the Corporation:

> "Unless otherwise authorized by the affirmative vote of the holders of not less than two-thirds of the outstanding shares of stock entitled to vote thereon, the corporation shall have no authority to sell, exchange, assign, convey or otherwise transfer all or any portion of the real property owned by the corporation . . .

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[5] Record Page 298; Res. App. 1.

[6] Record Pages 945-952.

> provided, further, that the board of directors, or the appropriate officers at the direction of the board of directors, shall have authority to sell or to convey to individuals, who are enrolled tribal members under section 893, Title 25, U.S.C. (Final roll) or their heirs-at-law, individual parcels which in the aggregate will not exceed 14,500 acres for home sites, agricultural use or other development. . . ."[7]

Thus, with the exception of sales or conveyances to individual Enrolled Menominees, not to exceed 14,500 acres in the aggregate, Menominee Enterprises, Inc., was required to obtain the approval of the "holders" of its outstanding voting stock before land sales could be made.

Menominee Enterprises, Inc., was incorporated by a four-member Committee known as the Coordinating and Negotiating Committee.

The Committee subscribed to *all* the stock issued by the Corporation—being 327,000 shares—and the Corporation issued a single stock certificate to the Committee for these shares.

The Committee, then, transferred all the stock to the Trustees of the Menominee Common Stock & Voting Trust, to be held and voted by the Trustees under the terms of the Trust Instrument.

Finally, the Trustees issued 3,270 Trust Certificates to, or on behalf of, the 3,270 Enrolled Menominees, with each Certificate representing 100 shares of stock in Menominee Enterprises, Inc., and showing the holders' beneficial interest in such stock.

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[7] Record Page 298; Res. App. 4.

The procedural steps actually taken to organize and establish both the Corporation and the Voting Trust were more detailed than outlined above.

However, it was *stipulated,* and the Trial Court found, that each step required to be taken under the Plan of Termination for the organization and establishment of the Corporation and the Voting Trust was, in fact, taken.[8]

Menominee Common Stock & Voting Trust

The Menominee Common Stock & Voting Trust is just what its name indcates—a voting trust.

The Trust Instrument was a part of the Plan of Termination adopted and approved by the Menominee Indian Tribe as a prelude to termination.[9]

Article VII of the Articles of Incorporation of Menominee Enterprises, Inc., (also a part of the Plan of Termination) provided as follows:

> "The shareholders of the corporation may, as provided by law, create a voting trust for the purpose of conferring upon trustees the right to vote or otherwise represent their shares, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, and it is contemplated that all of the shares initially issued by the corporation shall be placed in a voting trust."[10]

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[8] Record Pages 203-204, 269-270; Pet. App. 62-63

[9] Record Pages 93, 302-306.

[10] Record Pages 298, 938; Res. App. 3.

Section 180.27(1), Wisconsin Statutes, at all times material to this action, permitted, and provided for, voting trusts as follows:

> "Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares by entering into a written voting trust agreement specifying the terms and conditions of the voting trust. . . ."

The Trust Instrument conferred the following power upon the Trustees of the Menominee Common Stock & Voting Trust:

> "The Trustees, in respect of the stock held by them hereunder, are hereby vested as owners of such stock (without limitation except as herein otherwise expressly provided) with all of the rights, powers, and privileges of every kind and character of owners thereof, including without limiting the generality of the foregoing (a) the right to vote the same. . . ."[11]

It is undisputed that at all times since termination the voting stock of Menominee Enterprises, Inc., has been held in the names of, and has been voted by, the Trustees of the Menominee Common Stock & Voting Trust.

Lakes Of The Menominees

On August 10, 1967, a joint meeting was held of the Board of Directors of Menominee Enterprises, Inc., and the Trustees of the Menominee Common Stock & Voting Trust.

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[11] Record Page 303; Res. App. 26.

This joint meeting was attended by eight of the nine Directors of the Corporation and by all of the then seven Trustees of the Voting Trust.

At this joint meeting, the eight Directors and seven Trustees *unanimously* adopted the following resolution:

> "WHEREAS, there is no other means sufficiently capable of accomplishing the economic improvement of the Menominee community except by adoption and implementation of the ERNST & ERNST REPORT; and
>
> "WHEREAS, to provide necessary tax resources for Menominee County and/or the Town of Menominee and for the relief of taxation on Menominee Enterprises, Inc. (and the residents of Menominee County, Wisconsin), and to assure continued Menominee ownership thereof:
>
> "I. BE IT RESOLVED, that Menominee Enterprises, Inc. is authorized to proceed with the recommendations of the Ernst & Ernst Report as opportunity and feasibility permit; and
>
> "II. RESOLVED FURTHER, that the Corporation is authorized to define economic development zones on its land in Menominee County, Wisconsin, not to exceed 8,750 acres in areas to be defined and described from time to time by the Menominee Common Stock & Voting Trust, and/or the shareholders of the Corporation, whichever then holds the common stock; and
>
> "III. RESOLVED FURTHER, that pursuant to Article XII of the Articles of Incorporation of Menominee Enterprises, Inc. within such economic development zones warranty deeds may issue as a form of land transfer, provided a sufficient form of quality control is a condition of such transfer, and provided al-

ways that sufficient areas of land on lakeshore be reserved for Menominee use." [12]

On July 9, 1968, Menominee Enterprises, Inc., and N. E. Isaacson & Associates, Inc., entered into an agreement whereby they established what was termed a "joint venture" to be known as "Lakes Of The Menominees." [13]

By the terms of the Agreement of July 9, 1968, the joint venture was entered into "for the purpose of holding, developing and selling the lands referred to" in the Agreement. [14] The lands referred to in the Agreement consisted of 5,170 acres located within the economic development zone authorized by the above-quoted Joint Resolution of August 10, 1967. [14a]

The joint venture Agreement was contingent upon approval by the Trustees of the Menominee Common Stock & Voting Trust, which approval was given, unanimously, in July of 1968. [15]

Subsequently, between September 12, 1968, and April 5, 1971, Menominee Enterprises, Inc., as grantor, conveyed

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[12] Record Pages 271-272, 1234; Pet. App. 65-66.

[13] Record Pages 272, 702-716 (entire joint venture agreement); Pet. App. 66. The Agreement states that the parties thereto "hereby form joint venture", but it also provides that it shall be governed by the Wisconsin Uniform Partnership Act. (Record Page 716; Ch. 178, Wis. Stats.) We will conform to the terminology of the Agreement.

[14] Record Page 702.

[14a] Record Pages 1389-1390.

[15] Record Pages 205, 273, 1389-1394; Pet. App. 67.

a total of 5,170 acres of land to "Lake of the Menominees, a Partnership", as grantee. [16]

The land was conveyed by means of seven Warranty Deeds all of which were executed and recorded in the Office of the Register of Deeds for Menominee County, Wisconsin, prior to the commencement of this action. [17]

Lakes of the Menominees, then, undertook a substantial and extensive recreational land and lake development project known as "Legend Lake". The project consisted, generally, of selling recreational homesites, erecting water-level control dams, and constructing roads and recreational buildings.

Had the Legend Lake project been carried through to completion, approximately 2,700 recreational homesites would have been sold. However, the project was discontinued and the joint venture dissolved by an Agreement dated June 30, 1972. [18] By that time, approximately 2,000 lots had been sold, all projected dams had been erected, and many miles of roads had been constructed.

Present Action: Complaint—Supplemental Complaint

The present action was commenced on October 25, 1971, with the filing of a Summons, Complaint and Lis Pendens.

The original Complaint set forth two "counts." The first count was in the nature of a class action, and it was

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[16] Record Pages 273, 957-965; Pet. App. 67.

[17] Record Pages 273, 957-965; Pet. App. 67.

[18] Record Pages 1581-1604.

alleged that the Plaintiffs, approximately 162 in number, were "registered shareholders and/or holders of voting trust certificates of Menominee Enterprises, Inc.," and that they brought the action on behalf of other persons similarly situated. [19]

The second count of the original Complaint incorporated the allegations of the first count and, in addition, made the allegations necessary to make the action a shareholders' derivative action. [20]

The original Complaint named as parties defendant the two corporations that set up the joint venture—Menominee Enterprises, Inc., and N. E. Isaacson & Associates, Inc.,—together with nine of the then eleven Trustees of the Voting Trust [21] and the then Directors of Menominee Enterprises, Inc.

The first count attacked the validity of the Menominee Common Stock & Voting Trust on the ground, in short, that the Voting Trust had not been established in compliance

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[19] Record Page 19; Res. App. 5; Section 260.12, Wis. Stats.

[20] Record Page 25; Res. App. 13; Section 180.405, Wis. Stats.

[21] Article VI of the Voting Trust Instrument originally provided for seven Trustees. (Record Page 305; Res. App. 30) Seven was the required number of Trustees at all times material to the transactions between Menominee Enterprises, Inc., and N. E. Isaacson & Associates, Inc., regarding the joint venture and sales of land to non-Enrolled Menominees. The Trust Instrument was amended in November of 1970, with the required number of Trustees being increased to eleven. (Record Page 1034)

with Wisconsin law, in particular with Section 180.27(1), Wisconsin Statutes. [22]

The second count attacked the validity of sales and conveyances of land by Menominee Enterprises, Inc., to non-Enrolled Menominees, i.e., to Lakes of the Menominees and, then, by the joint venture to third parties. This attack was based on the claim that Menominee Enterprises had not obtained the requisite approval for such sales as required by Article XII of its Articles of Incorporation. [23]

Each of the two counts set forth in the original Complaint was followed by a separate prayer for relief. However, the substance of these separate prayers can be combined and summarized as follows:

(1) Declare the Menominee Common Stock & Voting Trust to be null and void;

(2) Declare the Lakes of the Menominees joint venture Agreement to be null and void;

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[22] Record Page 22; Res. App. 9. Paragraph 33 of the original Complaint provides as follows: "None of the plaintiffs nor any other MEI shareholders, to plaintiff's knowledge, have entered into a written voting trust agreement creating a voting trust for the purpose of conferring upon defendant trustees or any other trustees the right to vote or otherwise represent their shares in MEI." Cf. Section 180.27(1), Wis. Stats., quoted at Page 6 above.

[23] Record Pages 25-26; Res. App. 14. Paragraphs 55 and 56 of the Complaint provide as follows: "55. With the exception of certain limited sales of real property to enrolled Menominee tribal members, Article XII of the MEI Articles of Incorporation specifically bars the sale of corporation real property unless it is authorized by the affirmative vote of the holders of not less than two-thirds of the outstanding shares of stock entitled to vote thereon. 56. No sales of MEI real property have ever been authorized by the holders of not less than two-thirds of the outstanding shares of stock entitled to vote therein (sic)."

(3) Remove the Directors of Menominee Enterprises, Inc., from office—they had been elected by the Trustees—and order a special shareholders' meeting "for the purpose of electing a new board of directors pursuant to the MEI Articles of Incorporation and the Laws of the State of Wisconsin";

(4) Set up a procedure for the exchange of Voting Trust Certificates held by the beneficial shareholders, i.e., the Enrolled Menominees, for the corporate stock held by the Trustees;

(5) Enjoin the Defendants from further carrying out the Lakes of the Menominees Agreement; and,

(6) Order the re-conveyance to Menominee Enterprises, Inc., of all lands sold to the joint venture that had not been sold to good faith purchasers prior to the commencement of this action.

Subsequent to the commencement of this action, a Supplemental Complaint was served and filed. The Supplemental Complaint purported to raise a single, new issue. It was alleged that the Lakes of the Menominees joint venture Agreement terminated on December 31, 1971, by reason of the parties thereto not having formally extended the Agreement.

The issue raised by the Supplemental Complaint is moot, since it was stipulated, and the Trial Court found, that the parties did extend the Agreement by action taken in March of 1972.[24]

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[24] Stipulation: Record Page 206; Trial Court Finding: Record Page 274; Pet. App. 69.

Trial Court's Interlocutory Judgment

On December 1, 1972, the Circuit Court for Menominee County entered its Interlocutory Judgment.[25]

The Trial Court held that the Menominee Common Stock & Voting Trust was not invalid under Section 180.27(1), Wisconsin Statutes.

However, the Trial Court held that Article XII of the Articles of Incorporation of Menominee Enterprises, Inc., was ambiguous "as it relates to the period of time during which the corporation's stock is held by the Voting Trust."[26]

The Trial Court further held that the conveyance of 5,170 acres of land by Menominee Enterprises, Inc., to Lakes of the Menominees (the joint venture) was "made without the necessary approval required by Article XII of the Articles of Incorporation" and was "an improper exercise of the Corporation's power to convey land" and was, therefore, invalid.[27]

The Trial Court, then, enjoined all Defendants "from making any further sales of land to non-Menominees" from the lands described in the Lis Pendens.[28]

From a review of the Trial Court's original Decision,[29] and that Court's Findings of Fact,[30] it is clear that the

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[25] Record Pages 279-280; Pet. App. 72-73.

[26] Record Page 279; Pet. App. 72.

[27] Record Page 279; Pet. App. 73.

[28] Record Page 280; Pet. App. 73.

[29] Record Pages 208-229; Pet. App. 36-56.

[30] Record Pages 268-275; Pet. App. 60-70.

Trial Court came to the conclusion that the approval required by Article XII of the Articles of Incorporation had to be obtained from the beneficial shareholders, i.e., the Enrolled Menominees, rather than from the Trustees of the Voting Trust.

Of course, the Corporation had obtained a unanimous vote of approval from the Trustees of the Voting Trust.

Action By The Wisconsin Supreme Court

Upon an appeal being taken to the Wisconsin Supreme Court, that Court *affirmed* the Trial Court's holding regarding the validity of the Menominee Common Stock & Voting Trust.[31]

The Wisconsin Supreme Court *reversed* the Trial Court's holdings that Article XII was ambiguous and that the Trustees of the Voting Trust were without authority to vote the corporate stock held by them for purposes of approving land sales to non-Menominees.[32]

Subsequent Proceedings

Petitioners made a timely Motion for Rehearing in the Wisconsin Supreme Court which Motion was denied on August 14, 1973.[33]

On September 7, 1973, the Trial Court, in accordance with the mandate of the Wisconsin Supreme Court, entered Final Judgment in this action dissolving the injunction, discharging the Lis Pendens, and dismissing both the Comp'aint and Supplemental Complaint on their merits.[34]

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[31] Pet. App. 14-23.

[32] Pet. App. 23-28.

[33] Pet. App. 29.

[34] Record Pages 1642-1644; Res. App. 34-36.

On September 24, 1973, upon Petitioners' Motion under 28 U.S.C. Section 2101(f), the Wisconsin Supreme Court entered an Order staying enforcement and execution of the Final Judgment, for a period of ninety (90) days, in order to permit Petitioners to seek a writ of certiorari from the United States Supreme Court.

NATURE OF ACTION

Respondent has set forth above the basic, salient facts of the instant case as disclosed by the Record.

This brings us face-to-face with the often-overlooked, and, yet, most fundamental, question of any lawsuit:

> "In the simplest terms, just what is the fight in this case all about?"

Respondent submits that the "fight" in this case consists wholly of an "internal division" among the Menominee Indians.

This "internal division" arose out of the sale of lands by Menominee Enterprises, Inc., to non-Menominees.

It is not disputed, and it cannot be denied, that the lands sold by Menominee Enterprises, Inc., were lands owned by that private, business Corporation.

The "fight" (or internal division) boils down to a single question: *Who has the authority to vote the stock in Menominee Enterprises, Inc., for the approval of the sale of lands owned by Menominee Enterprises, Inc., to non-Menominees?*

Petitioners contend that this authority resides in the holders of Voting Trust Certificates, i.e., the Enrolled Menominees who are the *beneficial* stockholders of Menominee Enterprises, Inc., for so long as the Menominee Common Stock & Voting Trust is in existence.

Respondents, both Menominees and non-Menominees, take the position that this authority resides with the Voting Trustees of the Menominee Common Stock & Voting Trust, since they are the *actual* holders of the stock in Menominee Enterprises, Inc., during the existence of the Voting Trust.

We wish to emphasize that this is what the legal fight *in this case* is all about.

Respondent, in all good faith, entered into a contractual, business relationship with Menominee Enterprises, Inc., *prior* to the time that this internal division developed.

The Voting Trustees had approved both this contractual, business relationship, *and* the sale of land by Menominee Enterprises, Inc., unanimously. Respondent relied upon, and had a right to reply upon, the good faith actions of the Voting Trustees taken in accordance with the clear and unequivocal language of the Trust Instrument.

Now, Respondent finds itself caught in the middle of the internal division among the Menominees—an internal division that developed long after the Trustees' actions had been taken and long after Respondent entered into its contract with Menominee Enterprises, Inc.

Respondent respectfully submits that if the fundamental legal issue in this case (the "fight") is kept clearly in mind, then, the United States Supreme Court will see that this is not a proper case in which to grant a writ of certiorari.

REASONS FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI

I.

THE PETITION FOR A WRIT OF CERTIORARI FAILS TO COMPLY WITH SUPREME COURT RULE 23

United States Supreme Court Rule 23.1(f) provides, in pertinent part, as follows:

> "The petition for writ of certiorari shall contain in the order here indicated—
>
> • • •
>
> "(f) If review of the judgment of a state court is sought, *the statement of the case shall also specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e.g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court;* with such pertinent quotations of specific portions of the record, or summary thereof, with *specific* reference to the places in the record where the matter appears (e.g., ruling on exception, portion of the court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari." (Emphasis Supplied)

Respondent respectfully submits that the Petition herein wholly fails to comply with the above-quoted portion of Rule 23.

We search the Petition in vain to find any statement showing at what stage any federal question was raised in the Trial Court (the court of first instance), the manner

in which any such federal question was raised, and the manner in which the Trial Court passed on any such question.

We also search the Petition in vain to find any statement showing at what stage any federal question was raised in the Wisconsin Supreme Court (appellate court), the manner in which any such federal question was raised, and the manner in which the Wisconsin Supreme Court passed on any such question.

Respondent submits that the Petition should be denied on the ground of Petitioners' failure and apparent inability to comply with Supreme Court Rule 23.1.(f).

II.

PETITIONERS HAVE FAILED TO SHOW THE JURISDICTION OF THE UNITED STATES SUPREME COURT UNDER 28 U.S.C. 1257(3)

Petitioners invoke the jurisdiction of the United States Supreme Court under Title 28, United States Code, Section 1257(3).

That statutory provision provides as follows:

> "By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

In the instant case, it is clear that the validity "of a treaty or statute of the United States" has not been drawn in question. That is, there exists no claim or issue in this case to the effect that a treaty or statute of the United States was improperly adopted, executed or enacted, or that any such treaty or statute is in conflict with, or repugnant to, the Constitution or another treaty or statute.

It is equally clear that no statute of the State of Wisconsin is challenged in this case as being repugnant to the Constitution, treaties or laws of the United States.

The only Wisconsin statute involved in this case is Section 180.27(1) regarding voting trusts. The only issue raised concerning Section 180.27(1) was whether or not the Menominee Common Stock & Voting Trust had been set up in compliance with the statute. This is not a challenge of the statute, rather, it is a challenge of an instrument that must comply with the statute.

Therefore, if the United States Supreme Court is to have jurisdiction under 28 U.S.C. 1257(3) it must be on the ground that Petitioners "*specially set up or claimed*" some title, right, privilege or immunity under the Constitution, treaties or statutes of the United States.

Respondent respectfully submits that, at no point in the course of the instant case, have Petitioners "specially set up or claimed" any such title, right, privilege or immunity.

We propose to examine Respondent's position in two ways: First, we will look at the issues as presented to and stated by the courts below, and, second, we will examine claims made by Petitioners in their Petition in the light of the Record and the fundamental issue involved in this case.

Issues In The Courts Below

The issues raised by Petitioners in the Trial Court were stated succinctly by that Court, in its Decision of July 24, 1972, as follows:

> "Plaintiffs contend that the Voting Trust was not set up pursuant to Section 180.27, Wisconsin Statutes, which reads as follows:
>
> > 'Any number of shareholders of a corporation may create a voting trust . . . by entering into a written agreement . . .,' (Section 180.27 W.S.A., App. p. iii)
>
> "Plaintiffs also contend that the trustees did not have the power or the authority under Article XII of the Articles of Incorporation to authorize the sale of lands to non-Menominees. In the amended (sic) complaint referred to above, plaintiffs also contend that even if the LOM agreements were originally valid that due to the automatic termination of the agreement and the present make-up of the trustees there was no longer any authority for the sale of land after December 31, 1971." [35]

The above-quoted statement of the issues by the Trial Court conforms completely to the issues raised by Petitioners in their Complaint and their Supplemental Complaint prosecuted in the Trial Court.[36]

In their Brief to the Wisconsin Supreme Court, Petitioners set forth the issues (Questions Involved) as follows:

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[35] Record Pages 214-215; Pet. App. 42.

[36] Res. App. 5-16 and 17-21.

"The question presented by Plaintiffs' appeal is:

"1. Is the Menominee Common Stock & Voting Trust valid?

Answered by the Trial Court—'Yes'

"Plaintiffs believe the questions set forth by both parties Defendant concerning their appeal are more precisely stated:

"2. Do the tribal members have authority under Article XII of the MEI Articles of Incorporation to approve sales of land to non-Menominees?

Answered by the Trial Court—'Yes'

"3. Is the unsold land which was conveyed by MEI without the required approval of the tribal members to the Lakes of the Menominees partnership subject to Plaintiffs' lis pendens and an injunction prohibiting its sale?

Answered by the Trial Court—'Yes' "

An examination of Petitioners' Complaint and Supplemental Complaint, of the Trial Court's view of the issues, and of Petitioners' *own* statement of the issues before the Wisconsin Supreme Court shows clearly that Petitioners did not *specially set up or claim* any title, right, privilege or immunity under the Constitution, treaties or statutes of the United States.

In fact, the *only* right or privilege "specially set up or claimed" by Petitioners is the claimed right or privilege of *beneficial* stockholders to vote corporate stock for certain purposes, even though that corporate stock is actually held by the Trustees of a voting trust.

As the record clearly shows, however, this claim of right or privilege was not based upon a United States statute, treaty or the United States Constitution, rather, it was based solely upon Petitioners' reading and interpretation of Article XII of the Articles of Incorporation of Menominee Enterprises, Inc.

Claims Made In The Petition For A Writ Of Certiorari

At Page 12 of the Petition, we find the following statement:

> ". . . Today the contested rights concern the Menominee tribal members continuing rights under the provisions of the 1854 Treaty of Wolf River and the Menominee Termination Act and Plan *to control their tribal assets, in general, and the sale of their tribal lands to non-Menominees, in particular.*" (Emphasis Supplied)

The above-quoted statement is representative of many other, similar statements and inferences to be found throughout the Petition.

Taken at face value, such statements and inferences throughout the Petition might appear to constitute a "specially set up or claimed" title, right, privilege or immunity under the Constitution, treaties, or statutes of the United States.

Respondent most certainly intends no disrespect of Petitioners, their Counsel or the United States Supreme Court.

However, Respondent emphatically submits that the above-quoted statement, together with other similar statements and inferences contained in the Petition, (1) assume two facts that simply are not true, (2) ignore undisputed and undeniable facts contained in the Record, and (3) disregard the fundamental issue of this case that was presented by Petitioners in the first instance.

The first fact assumed by Petitioners, that simply is not true, is that this lawsuit concerns *tribal* assets and *tribal* lands. Since Termination, there have been no *tribal* assets or *tribal* lands as there were prior to Termination.

Rather, *all* assets and *all* lands are, today, *corporate* assets and *corporate* lands. *They are the assets and lands of Menominee Enterprises, Inc.*

The second fact assumed by Petitioners, that simply is not true, is that the Enrolled Menominees have lost, or have been denied, any right of control over the sale of lands owned by Menominee Enterprises, Inc., to non-Menominees.

The fallacy of this second, assumed fact is made clear by the following, undisputed and undeniable facts, contained in the Record, which Petitioners have chosen to ignore.

First, any reference to the Menominee Indian Tribe or tribal members must mean the Enrolled Menominees.

Second, the Menominee Indians approved and adopted the Plan of Termination.[37]

Third, the Plan of Termination contained the Articles of Incorporation of Menominee Enterprises, Inc., and the Trust Instrument setting up the Menominee Common Stock & Voting Trust.[38]

Fourth, both the Plan of Termination and the Termination Act provided for the conveyance and transfer of prior Reservation lands to Menominee Enterprises, Inc.

Fifth, the Enrolled Menominees are the beneficial stockholders in Menominee Enterprises, Inc., and are the holders of Voting Trust Certificates.[39]

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[37] Record Pages 269, 937-939; Pet. App. 62.

[38] Record Pages 298, 302-306, 938-939; Res. App. 1-4, 22-33.

[39] Record Page 303; Res. App. 24-25.

Sixth, as Voting Trust Certificate Holders, the Enrolled Menominees elect the Trustees of the Menominee Common Stock & Voting Trust.[40]

Seventh, originally, the Trust Instrument provided for seven Trustees "four of whom *shall* be enrolled members of the Menominee Indian Tribe."[41] This provision was amended in 1970 to increase the number of Trustees from seven to eleven *and* to provide that, thereafter, *all* Trustees shall be Menominees.[42]

Again, Petitioners would have the United States Supreme Court believe that the Enrolled Menominees have lost, or have been denied, all right or control over the sale of lands, owned by Menominee Enterprises, Inc., to non-Menominees.

The Wisconsin Supreme Court did not so hold, Petitioners did not raise such an issue below, and the undisputed and undeniable facts contradict any such assumption.

The Wisconsin Supreme Court held only that, during the existence of the Menominee Common Stock & Voting Trust, the Trustees, as the actual holders of the corporate stock, were the persons entitled to vote that stock.

This holding was based upon a reading of the Trust Instrument's plain and unequivocal language, an instrument that was adopted and approved by the Menominee Indians themselves.

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[40] Record Page 305; Res. App. 30.

[41] Record Page 305; Res. App. 30.

[42] Record Pages 1033, 1934.

Furthermore, who are these Trustees? The majority always have been Menominee Indians, all of them either are now or soon will be Menominee Indians, and they are individuals elected by the Enrolled Menominees. Furthermore, in accordance with the terms and provisions of the Trust Instrument, the Enrolled Menominees can amend the Trust and can terminate the Trust.

In short, Petitioners in their Petition choose to ignore the undisputed and undeniable facts set forth above, they choose to ignore the actual holding of the Wisconsin Supreme Court, they choose to ignore the fundamental issue of this case that they raised, and they choose to ignore the fact that they based their case upon their interpretation of one corporate instrument and upon a claim that a second instrument violated a state statute.

We respectfully submit, therefore, that when the argument in the Petition is examined in the light of the Record and those facts which Petitioners have chosen to ignore, the United States Supreme Court will see that Petitioners have not invoked properly the jurisdiction of this Court under Title 28, United States Code, Section 1257(3).

CONCLUSION

As we pointed out above, the legal "fight" in this case consists wholly of an internal division among the Menominee Indians.

This internal division developed over the question of voting the corporate stock of Menominee Enterprises, Inc., for the approval of the sale of lands owned by Menominee Enterprises, Inc., to non-Menominees.

Petitioners put this internal division into justiciable form by relying upon their interpretation of one corporate in-

strument (Articles of Incorporation) and by challenging the validity of another corporate instrument (Trust Instrument).

Two points must be emphasized. First, *both* corporate instruments, the one relied upon and the one challenged, were "state" instruments in that they were prepared and recorded in accordance with and pursuant to state statutes.

Second, the Trust Instrument was challenged on the ground that it violated a *state* statute.

Having relied, unsuccessfully, upon their interpretation of one "state" instrument, and having challenged, unsuccessfully, another "state" instrument under state law, Petitioners now seek from the United States Supreme Court a second hearing of their state questions.

Petitioners seek this second hearing on their state questions by presenting in their Petition a question (a) that was not presented in the courts below, (b) that makes no sense within the context of the present case, and (c) that disregards a clear provision of the Termination Act.

Petitioners simply did not request the courts below to apply the so-called rule of liberal construction which they present and expound upon in their Petition.

The so-called rule of liberal construction discussed by Petitioners applies "to the federal government's dealings with the Indians".

The present case simply does not concern itself with the "federal government's dealings with the Indians."

This is a case which presented challenges to and under certain corporate instruments and which challenged certain actions taken under those corporate instruments. The so-called rule of liberal construction raised by Petitioners is irrelevant to this case.

Finally, we invite the Court's attention to Title 25, United States Code, Section 899, which provides, in part, as follows:

> "When title to the property of the Tribe has been transferred, as provided in section 8 of this Act, the Secretary shall publish in the Federal Register an appropriate proclamation of that fact. Thereafter . . . *the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction.*" (Emphasis added)

Petitioners, now, seek treatment by the United States Supreme Court that would be in conflict with the above-quoted provision from the Termination Act.

In asking the United States Supreme Court to take the instant case, Petitioners are asking that the "laws of the several states", i.e., the laws of the State of Wisconsin, not be applied to them in the same manner as those laws are applied to all other Wisconsin citizens. Such favored treatment, in the instant case, would clearly violate the Termination Act.

In conclusion, we submit that this is a case arising wholly out of an internal division among the Menominee Indians. That internal division revolves around legal instruments and legal entities that were, necessarily, prepared and established under and in accordance with the laws of the State of Wisconsin. Petitioners have raised no Federal challenges to the applicable state laws, such as would confer jurisdiction on the United States Supreme Court.

Respectfully submitted,

VANCE M. WAGGONER II
Attorneys for Respondent,
N. E. Isaacson & Associates, Inc.

APPENDIX

APPENDIX A

ARTICLES OF INCORPORATION OF MENOMINEE ENTERPRISES, INC.

The undersigned individuals, who are the members of the Coordinating and Negotiating Committee of the Menominee Indian Tribe, for the purpose of forming a Wisconsin corporation under Chapter 180 of the Wisconsin Statutes, do hereby adopt the following Articles of Incorporation:

ARTICLE I—NAME

The name of the corporation is Menominee Enterprises, Inc.

ARTICLE II—PURPOSE

The purpose for which this corporation is organized is to engage in any lawful activity within the purposes for which corporations may be organized under the Wisconsin Business Corporation Law. Without limiting in any way the generality of the foregoing, the corporation shall manage and operate all of the businesses and property, real and personal, transferred to the corporation by the United States of America, pursuant to section 897, Title 25, U.S.C.

ARTICLE III—AUTHORIZED CAPITAL

The total number of shares which the corporation shall have authority to issue is 330,000, consisting of one class only, designated as common stock of the par value of One Dollar ($1.00) per share. The corporation and/or its share-

holders shall have the right by amendment to these Articles by affirmative vote of the holders of not less than two-thirds of its outstanding shares entitled to vote, to prohibit or restrict, subject to such terms and conditions it or they may see fit, the right of any holder of common stock to sell or otherwise dispose of his shares of common stock without first offering the same to the corporation or its nominees, or giving the corporation or its nominees an option to reacquire the stock from a transferee.

ARTICLE IV—AUTHORITY TO PURCHASE SHARES

Subject to the provisions of section 180.385(1) (a) and (b), the corporation is authorized to purchase shares of its own stock or voting trust certificates issued in exchange for such shares, without vote of the shareholders and without regard to the availability of unreserved and unrestricted earned surplus equal to the cost of such shares. Preemptive rights shall attach to the sale of treasury shares, except that an amount of treasury shares not in excess of 6 percent of issued and outstanding shares may be set aside by the board of directors for insurance under an employee stock ownership plan.

ARTICLE V—DIRECTORS

The business and affairs of the corporation shall be managed by its board of directors, which shall consist of nine (9) directors. At the first annual meeting of shareholders, the nine directors elected shall be divided into three classes, to consist of three directors in each class, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class to

expire at the third annual meeting after their election. A total of four directors, including at least one member of each class, shall be members of the Menominee Indian Tribe of Wisconsin, whose names appear on "Final Roll—Menominee Indian Tribe of Wisconsin" as proclaimed by the Secretary of Interior of November 26, 1957, and published at pages 9951-9972, FEDERAL REGISTER, December 12, 1957, or blood descendants of such members, and such directors shall be designated "Tribal Directors". At each annual meeting subsequent to the first annual meeting three directors shall be elected to hold office for three years, except when elected by the shareholders to fill the unexpired term of their predecessors. No person shall be eligible to serve as a director of the corporation at the same time he is a trustee under any voting trust entered into by shareholders of the corporation, pursuant to article VII of these Articles of Incorporation. Directors need not be residents of the State of Wisconsin. Any vacancy occurring in the Board of Directors shall be filled until the next succeeding annual election of directors by the affirmative vote of a majority of the directors then in office although less than a quorum.

The initial directors who shall serve until the first annual meeting of shareholders, shall be as follows:

_____	_____	_____
_____	_____	_____
_____	_____	_____

No person who is a member of the county board of Menominee County or of the town board of any town or supervisor of any village in such county shall be eligible to be a director.

ARTICLE VI—QUORUM OF SHAREHOLDERS

One-third of the outstanding shares of the corporation entitled to vote, represented in person or by proxy, shall constitute a quorum at any meeting of shareholders.

ARTICLE VII—VOTING TRUST

The shareholders of the corporation may, as provided by law, create a voting trust for the purpose of conferring upon trustees the right to vote or otherwise represent their shares, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, and it is contemplated that all of the shares initially issued by the corporation shall be placed in a voting trust.

ARTICLE VIII—OPERATION OF FOREST ON SUSTAINED-YIELD BASIS

In accordance with the requirements of section 896, Title 25, U.S.C., the forest lands classified as such by the United States pursuant to §143.50 of Title 25, CFR, when transferred by the United States of America to the corporation, shall be operated by the corporation and any assignee or successor in interest on a sustained-yield basis, consistent with sound forestry practice; provided, however, that the Board of Directors may from time to time determine by resolution what lands shall be designated forest land, or removed from such designation not inconsistent with law, and shall record such resolution or resolutions with the register of deeds for the county or counties in which such lands are located. Notwithstanding the provisions of Article X or any other article dealing with amendments to these articles, or any other provisions of law, this article may not

be amended by the shareholders to delete the requirement that forest lands shall be operated on a sustained-yield basis consistent with sound forestry practice unless expressly permitted by the Congress of the United States of America.

ARTICLE IX—REGISTERED OFFICE AND AGENT

The address of the initial registered office of the corporation is Neopit, Wisconsin, and the name of the initial registered agent at such address is .....

ARTICLE X—AMENDMENT

These articles may be amended by an affirmative vote of the holders of at least two-thirds of the shares entitled to vote thereon at any regular meeting of shareholders, or special meeting of shareholders called for that purpose.

ARTICLE XI—INCORPORATORS

The names and addresses of the incorporators are:

George W. Kenote, Keshena, Wis.
Gordon Dickie, Keshena, Wis.
Mitchell A. Dodge, Keshena, Wis.
Jerome Grignon, Keshena, Wis.

ARTICLE XII—SALE OF LAND

Unless otherwise authorized by the affirmative vote of the holders of not less than two-thirds of the outstanding shares of stock entitled to vote thereon, the corporation shall have no authority to sell, exchange, assign, convey or otherwise transfer all or any portion of the real property owned by the corporation; provided, however, that the board of directors, or the appropriate officers at the

direction of the board of directors, may mortgage or pledge corporation assets, for such borrowing purposes as it shall deem necessary and advisable, in an amount not exceeding $250,000; and, provided, further, that the board of directors or the appropriate officers at the direction of the board of directors shall have authority to lease real property other than lands designated as forest lands; and, provided, further, that the board of directors, or the appropriate officers at the direction of the board of directors, shall have authority to sell or to convey to individuals, who were enrolled tribal members under section 893, Title 25, U.S.C. (final roll) or their heirs-at-law, individual parcels which in the aggregate will not exceed 14,500 acres for home sites, agricultural use or other development, which lands shall be zoned for that purpose and shall not include lands designated as forest lands.

Executed in duplicate this ..... day of ....., 196.....

GEORGE W. KENOTE,
GORDON DICKIE,
MITCHELL A. DODGE,
JEROME GRIGNON.

APPENDIX B

COMPLAINT
(Record Pages 129-141; Formal Parts Omitted)

Now come the Plaintiffs above-named, by Joseph F. Preloznik, their attorney, and for a complaint against the defendants above-named, allege:

FIRST COUNT

1. Plaintiffs are all adult residents of the State of Wisconsin and either are now or were at the time of the transactions or any part thereof of which they complain, registered shareholders and/or holders of voting trust certificates of Menominee Enterprises, Inc., and bring this action on their own behalf and on behalf of all other shareholders of said corporation similarly situated; the questions raised herein being of common interest of all shareholders and holders of trust certificates and the said holders being so numerous that it is impractical to bring them all before the court.

2. Defendant Menominee Enterprises, Inc., hereinafter sometimes referred to as "MEI", is a corporation organized and doing business under Chapter 180 of the laws of the State of Wisconsin with its principal place of business and general offices at Neopit, Wisconsin.

3. Defendant George Kenote is an adult residing at Keshena, Wisconsin, whose occupation is that of a part-time real estate salesman.

4. Defendant Hilary J. Waukau, Sr., is an adult male resident of Neopit, Menominee County, Wisconsin, who is employed by Menominee Enterprises, Inc., a Wisconsin business corporation.

5. Defendant W. Don Knight is an adult male resident of Madison, Dane County, Wisconsin, residing therein at 4514 Keating Terrace, whose occupation is that of professor.

6. Defendant Delores Boyd is an adult female resident of Neopit, Menominee County, Wisconsin, whose occupation is that of director of Menominee County Child Development Center.

7. Defendant Lucille B. Chapman is an adult female resident of Keshena, Menominee County, Wisconsin, whose occupation is unknown to plaintiffs.

8. Defendant William R. Moser is an adult male resident of South Milwaukee, Milwaukee County, Wisconsin, residing therein at 1410 Lake Drive, whose occupation is that of circuit judge.

9. Defendant Andre LeMay is an adult male resident of Keshena, Menominee County, Wisconsin, whose occupation is that of plumbing contractor.

10. Defendant Roger J. Grignon is an adult male resident of Shawano, Shawano County, Wisconsin, residing therein at 1111 North Smallery Street, whose occupation is unknown to plaintiffs.

11. Defendant Earl R. Westcott is an adult male resident of Keshena, Menominee County, Wisconsin, whose occupation is unknown to plaintiffs.

12. The defendants named in paragraphs 3 through paragraph 11 above are trustees of the so-called Menominee Common Stock and Voting Trust (hereinafter called the "Voting Trust") and constitute 9 of the 11 trustees of the said Voting Trust, and have been sued in their capacities as trustees.

13. Defendant Georgianna W. Ignace is an adult female resident of Milwaukee, Milwaukee County, Wisconsin, residing therein at 1527 Carriage Lane, whose occupation is housewife.

14. Defendant Ada Deer is an adult female resident of Madison, Wisconsin, residing therein at 2231 Woodview Ct., Apt. 29, who is a law student.

15. The defendants named in paragraphs 13 and 14 above are recently elected Trustees of the Voting Trust. They did not participate in, approve, or in any way ratify the transactions complained of herein, and they are joined as defendants in order that they may be subject to the jurisdiction of the court and be bound by any orders or judgments made.

16. Defendant Joseph E. Frechette is an adult male resident of Neopit, Menominee County, Wisconsin, and is president and a director of MEI.

17. Defendant Theodore S. Boyd is an adult male resident of Neopit, Menominee County, Wisconsin, and is a vice-president and a director of MEI.

18. Defendant Myron W. Grignon, Sr., is an adult male resident of Neopit, Menominee County, Wisconsin, and is secretary of MEI.

19. Defendant Raymond W. Dickinson is an adult male resident of Shawano, Shawano County, Wisconsin, residing therein at Route 1, his occupation is unknown to plaintiffs, and he is a director of MEI.

20. Defendant Gordon A. Bubolz is an adult male resident of Appleton, Outagamie County, Wisconsin, residing therein at 1001 W. Foster Street; his occupation is that of lawyer, and he is a director of MEI.

21. Defendant Richard R. Dodge is an adult male resident of Escanaba, Michigan, residing at 507 South 11th Street; his occupation is unknown to plaintiffs, and he is a director of MEI.

22. Defendant William Fredenburg is an adult male resident of Green Bay, Brown County, Wisconsin, residing at 735 North Jefferson; his occupation is unknown to plaintiffs, and he is a director of MEI.

23. Defendant Bernard Kaquatosh is an adult male resident of Stevens Point, Portage County, Wisconsin, residing at 1820 Michigan Avenue; his occupation is that of logging contractor and he is a director of MEI.

24. Defendant Harry W. Harder is an adult male resident of Keshena, Menominee County, Wisconsin; he is retired and he is a director of MEI.

25. Defendant Gordon Dickie is an adult male resident of Neopit, Menominee County, Wisconsin; his occupation is unknown to plaintiffs, and he is a director of MEI.

26. Defendant Edward G. Vigue is an adult male resident of South Bend, Indiana, residing at 1217 South 35th Street; his occupation is unknown to plaintiffs, and he is a director of MEI.

27. Defendant Leo A. Seefeldt is an adult male resident of Neopit, Menominee County, Wisconsin; he is Acting President of MEI.

28. Defendant Letitia Caldwell is an adult female resident of Neopit, Menominee, Wisconsin, and is Assistant Treasurer of MEI.

29. Defendant Atlee A. Dodge is an adult male resident of Keshena, Menominee County, Wisconsin; his occupation is that of Vice President in charge of Resources and Business for MEI, and he is a director of MEI.

30. Defendant Lawrence R. Johnson is an adult male resident of Shawano, Shawano County, Wisconsin, residing therein at 246 Lake Drive; his occupation is unknown to plaintiffs, and he is a director of MEI.

31. Defendants named in paragraphs 16 through 30 are sued herein in their capacities as directors and officers of MEI.

32. N. E. Isaacson and Associates, Inc., (hereinafter sometime referred to as "Isaacson") is a corporation organized and existing under the laws of the State of Wisconsin, with its principal place of business and general office at Reedsburg, Wisconsin.

33. None of the plaintiffs nor any other MEI shareholders, to plaintiff's knowledge, have entered into a written voting trust agreement creating a voting trust for the purpose of conferring upon defendant trustees or any other trustees the right to vote or otherwise represent their shares in MEI.

34. Defendants MEI, directors, and officers wrongfully and without proper authority deposited plaintiffs and other shareholders' stock certificate with defendant trustees.

35. Defendant trustees acting without proper authority have taken it upon themselves, under color of the so-called "Menominee Common Stock Voting Trust" which plaintiffs and other shareholders have not agreed to or signed, to hold said stock certificate and to deliver to plaintiffs and other shareholders mere certificates of trust.

36. Defendant trustees are and have been unlawfully exercising the voting rights of plaintiffs and other shareholders in that they have elected the defendant directors as directors of MEI, and, excepting Trustees Ignace and

Deer, they have participated in, approved and/or ratified a decision of the defendant directors to sell MEI land to non-enrolled Menominee tribal members (hereinafter referred to as "non-Indians") in violation of the Articles of Incorporation, and in usurpation of plaintiffs' rights.

37. Pursuant to the trustees' approval, defendant directors and defendant officers have entered into and are carrying out an agreement with defendant Isaacson whereby they purported to bind MEI to a joint venture with defendant Isaacson under the name "Lake of the Menominees;" said venture involving the sale of certain MEI real property they labeled "Legend Lake" to non-Indians.

38. Under that agreement, defendants MEI, directors and officers transferred title to Legend Lake property to "Lake of the Menominees," and entered into an agreement giving officers of Isaacson power to execute all conveyances of said property.

39. Vast quantities of said land have been sold to non-Indians. To the best of plaintiffs' knowledge, that part of the Legend Lake property not yet sold consists of portions of the real property conveyed to Lake of the Menominee by Documents Nos. 1522, 2370, 3783, 2381, 2414, 3281, and 5099, in Records of the Register of Deed, Menominee County, Wisconsin, which lands are fully described in Exhibit A attached hereto and hereby incorporated herein and made a part hereof, with the same force and effect as if set forth herein.

40. On information and belief, plaintiffs allege that defendant directors and officers have in the past and may in the future sell other corporation real property unknown to plaintiffs and, as other lands not in the Legend Lake development come on the market, said defendants are

executing and will continue to execute waivers of the corporation's right to repurchase that land; said real property being part of the land situated in the County of Menominee, State of Wisconsin, and conveyed to MEI in deeds recorded as Documents Nos. 10 and 11, on the 1st day of September, 1961 in Volume of Records, pages 15 and 19, respectively, and more particularly described in Exhibit B attached hereto and hereby incorporated herein and made a part hereof, with the same force and effect as if set forth herein.

WHEREFORE, plaintiffs demand judgment as follows:

1. A declaration that the so-called "Menominee Common Stock and Voting Trust" is null and void;

2. An order permanently enjoining defendants Kenote, R. Grignon, Ignace, Deer, Wescott, Waukau, Knight, D. Boyd, Chapman, Moser, and Lemay, and each of them, from attempting to exercise in any way the rights of plaintiffs and other MEI shareholders; and

3. An order setting up a procedure for the exchange of plaintiffs and other shareholders' trust certificates for stock certificates representing their respective shares in MEI;

4. A declaration that defendant directors were not properly elected to the Board of Directors of MEI; that they had and have no authority to dispose of the assets of the corporation and that any agreements involving the sale of corporate real property, including that with N. E. Isaacson & Associates, Inc., dated on or about July 9, 1968, are null and void and unenforceable, *except as to the rights of prior good faith purchasers;*

5. A declaration that the Agreement dated July 9, 1968, by which the then President and Secretary of MEI gave N. E. Isaacson and Ralph Voss of N. E. Isaacson & As-

sociates, Inc., power of attorney to execute all deeds of conveyance from Lake of the Menominees to any purchaser is null and void; said Agreement being Document No. 1534 filed for record on October 21, 1968;

6. An order that a special shareholders' meeting be called for the purpose of electing a new Board of Directors pursuant to the MEI Articles of Incorporation and the laws of the State of Wisconsin; and pending said meeting, an order restraining said directors and officers from disposing of any assets of the corporation or any interests therein;

7. An order requiring Defendants MEI and Isaacson to reconvey to MEI all properties formerly transferred to Lake of the Menominees which had not been conveyed to a good faith purchaser at the time said defendants learned of this proposed lawsuit or at the time of filing the said action whichever is earlier.

SECOND COUNT

50. Plaintiffs incorporate herein and make a part hereof, with the same force and effect as if re-alleged herein, all allegations contained in their first count.

5. Plaintiffs are and were either registered shareholders and/or holders of voting trust certificates at the time of the transactions or any part thereof of which they complain, or their shares or voting certificates thereafter devolved upon them by operation of law from a holder who was a holder at the time of the transaction or any part thereof of which they complain; and plaintiffs bring this action in the right of MEI, being holders of not less than three (3%) per cent of any class of MEI shares issued and outstanding.

52. Plaintiffs have delivered to the corporation and the board of directors a copy of this complaint, asking them to indicate within 5 days whether or not they will take the action requested herein, stating its purpose so to file this complaint if an affirmative reply is not received.

53. Plaintiffs have not taken further efforts to secure from the defendant directors such action, because all the present directors participated in, approved of and/or were the beneficiaries of the wrongful acts and conduct herein alleged and are themselves named as defendants herein; and any further demand upon the corporation to bring action to redress the wrongs herein would, in effect have required its board of directors to institute suit against themselves and members of the Menominee Common Stock and Voting Trust who participated in and approved the said wrongful acts and would have been futile.

54. Acting as directors and officers of MEI, defendants directors and officers have been and are continuing to conduct the affairs of the corporation and to deal with corporate assets.

55. With the exception of certain limited sales of real property to enrolled Menominee tribal members, Article XII of the MEI Articles of Incorporation specifically bars the sale of corporation real property unless it is authorized by the affirmative vote of the holders of not less than two-thirds of the outstanding shares of stock entitled to vote thereon.

56. No sales of MEI real property have ever been authorized by the holders of not less than two-thirds of the outstanding shares of stock entitled to vote therein.

57. Nevertheless the defendants directors and officers have purported to so sell MEI real property and continue to do so as set forth more particularly in paragraphs 37 and 40 of the first count.

WHEREFORE, plaintiff demands judgment as follows:

1. That defendants T. Boyd, Bubolz, Dickie, Dickinson, A. Dodge, R. Dodge, Frechette, Fredenberg, Harder, Johnson, Kequatosh, Vigue, Seefeldt, M. Grignon, and Caldwell be removed as directors and officers of MEI and a special shareholders' meeting be called for the purpose of electing a new board of Directors pursuant to the MEI Articles of Incorporation and the Laws of the State of Wisconsin;

2. That the contract and/or agreement entered into between defendants directors and officers and Isaacson, dated on or about July 9, 1968 is null and void, and should be cancelled and rescinded;

3. That defendants directors and officers and each of them account for their acts as directors, officers, and fiduciaries of MEI and that they be directed to pay over to the court any and all sums of money and any and all assets accounted for;

4. That defendants directors and officers and each of them be adjudged and decreed jointly and severally to be constructive trustees of any and all money, funds, assets, facilities, properties received and acquired by them as a result of acts committed against the laws of the State of Wisconsin and/or in breach of fiduciary obligations owing to MEI;

5. That defendants directors and officers account to plaintiffs, for their acts and conduct herein complained of, and that they be directed to pay over to MEI, all losses and damages occasioned by their acts and conduct, and all profits or/gains received by them in their said acts and conduct.

6. That defendants directors and officers be enjoined and restrained from in any way whatsoever honoring its contract with Isaacson.

7. Plaintiffs have such other and further relief as may be just and proper, with costs and disbursements of this action, including the fair and reasonable allowance of counsel fees and any other lawful expenses in connection with the prosecution of this action.

/s/ *Joseph F. Preloznik*
JOSEPH F. PRELOZNIK
Attorney for Plaintiffs
WISCONSIN JUDICARE
520 University Avenue
Madison, Wisconsin 53703

APPENDIX C

SUPPLEMENTAL COMPLAINT
(Record Pages 164-168; Formal Parts Omitted)

Come now plaintiffs, by their attorneys, and by leave of court and for their supplemental complaint, state as follows:

1. Plaintiffs incorporate herein and make a part hereof with the same force and effect as if re-alleged herein, all allegations contained in their complaint filed in October, 1971.

2. On November 27, 1971, two new trustees were elected. They were new defendant Carol Dodge, an adult residing at 3200 Water Street, #29A, Stevens Point, Wisconsin, who is a student, and plaintiff John Gauthier.

3. In December, 1971, the following new directors were elected to MEI:

(1) Plaintiff Sylvia Wilber.

(2) Plaintiff Lloyd Powless.

(3) Gordon Keshena, an adult residing in Milwaukee, Wisconsin, whose address is c/o Inland Ryerson Construction Products Co., Box 393, who is in the construction business.

(4) New defendant Robert Deer, an adult, residing at 914 Edgewater Court, Madison, Wisconsin, who is a student.

4. New defendants Carol Dodge, Gordon Keshena, and Robert Deer, did not participate in, approve, or in any way ratify the transactions complained of in the complaint or

this supplemental complaint and they are joined as defendants in order that they may be subject to the jurisdiction of the court and be bound by any orders or judgment made.

5. Paragraph 17 of the joint venture agreement between defendant MEI and defendant Isaacson mentioned in Paragraph 37 of the Complaint reads as follows:

> "*17. (a) The joint venture will be dissolved at the close of the calendar year 1971, unless such term is shortened or extended by agreement of the parties.* Upon dissolution of the joint venture for any reason, the liabilities of the joint venture shall be discharged, the net income or loss to date of dissolution, shall be credited or debited, as the case may be, to the capital accounts of the parties, and the assets of the joint venture then remaining shall be distributed as follows:
>
> (1) Two Hundred Thousand Dollars ($200,000.00) shall be distributed first to Enterprises.
>
> (2) Two Hundred Thousand Dollars ($200,000.00) shall be distributed to Isaacson.
>
> (3) The balance, if any, shall be distributed in proportion to capital accounts of Enterprises and Isaacson. (Emphasis added)
>
> (b) Any land, buildings and developments held by the joint venture upon dissolution, shall, upon the election of Enterprises, be transferred to Enterprises as its share of the dissolution distribution as provided herein. Such land, buildings and developments shall be valued at the book value thereof, less any liens or encumbrances to which they are subject. In the event such net book value of land owned by the joint venture

upon dissolution exceeds the amount of the capital account of Enterprises, Enterprises shall have the option to pay the amount of such excess to the joint venture and receive all of such land."

6. The parties to said joint venture agreement did not extend the agreement.

7. If the defendant MEI and defendant directors wished to enter into another agreement which involved the sale of land to non-Menominees, they were required to follow the dictates of Article XII of the MEI Articles of Incorporation. The pertinent part of that section states:

"Unless otherwise authorized by the affirmative vote of the holders of not less than two-thirds of the outstanding shares of stock entitled to vote thereon, the corporation shall have no authority to sell, exchange, assign, convey or otherwise transfer all or any portion of the real property owned by the corporation: . . ."

8. Plaintiffs assert that Article XII requires a two-thirds vote of the enrolled Menominees and defendants, except defendants Ada Deer, Georgianna Ignace, Robert Deer, and Carol Dodge, assert that this article requires only a two-thirds vote of the eleven trustees of the Menominees Common Stock and Voting Trust.

9. Since termination of the joint venture agreement, neither two-thirds of the enrolled Menominees nor two-thirds of the Trustees have authorized new sales to non-Menominees. At the present time, the defendants MEI and Isaacson could not obtain a two-thirds vote of authorization from the trustees, as evidenced by the attached affidavits, marked as Exhibits 1-6.

10. Despite this failure to receive proper authorization, MEI and Isaacson have begun once more to sell MEI land to non-enrolled Menominees and threaten to continue doing so, which action is and will cause irreparable harm to defendants.

11. Upon information and belief, defendant MEI, acting through and with the approval of its directors, except new directors Wilber, Keshena, Robert Deer, and Lloyd Powless, has co-signed the mortgages and mortgage notes of those who have bought MEI real property since the filing of this action.

12. Upon information and belief, MEI, acting through and with the approval of its directors, except new directors Wilber, Keshena, Robert Deer, and Powless, is not holding the proceeds of said sales in reserve in case it becomes necessary for the corporation to pay off the mortgages.

WHEREFORE, in addition to the relief sought in their complaint, plaintiffs pray the court to declare the joint venture contract between defendants MEI and Isaacson to be dissolved and terminated, to permanently enjoin the sale, conveyance or transfer of any interest in any real property to non-Menominees under the color of said contract, and pending a final determination of this matter, to enjoin said defendants from entering into said transaction.

Joseph F. Preloznik
Warren A. Kenney
WISCONSIN JUDICARE
Ruth S. Downs
WISCONSIN INDIAN LEGAL SERVICES
Attorneys for Plaintiffs
520 University Avenue
Madison, Wisconsin 53703

APPENDIX D

MENOMINEE COMMON STOCK & VOTING TRUST
(Record Pages 302-306)

Menominee Common Stock and
Voting Trust

This Agreement, entered into as of the ..... day of ....., 19,...., between George W. Kenote, Gordon Dickie, Mitchell A. Dodge, and James G. Frechette, who constitute the Coordinating and Negotiating Committee of the Menominee Indian Tribe, acting on behalf of all the duly enrolled tribal members thereof (hereinafter called "Depositors"), and

....,
....,
....,

and ....., and their successors, as Trustees (hereinafter called the "Trustees") and Menominee Enterprises, Inc., a Wisconsin corporation (hereinafter called the "Company").

WITNESSETH

Whereas, the Depositors are the holders on behalf of enrolled members of the Menominee Indian Tribe and their lawful distributees, of the Certificate of Beneficial Interest issued by the Menominee Indian Tribe pursuant to section 893, Title 25, U.S.C. which Certificate is to be cancelled by the Depositors in accordance with the terms and provisions of the "Plan for the Future Control of Menominee Indian Tribal Property and Future Functions (hereinafter called "Plan"); and

Whereas, the Plan provides for the issuance to Depositors by the Company of 327,000 shares of One Dollar ($1.00) par value common stock of the Company, which Company has been formed pursuant to sections 896, and 897, Title 25, U.S.C. to take title to part of the tribal lands, assets, enterprises, business and property, real and personal, legally or beneficially owned by the Menominee Indian Tribe of Wisconsin, and for the deposit of such shares of stock in a Menominee Common Stock and Voting Trust in exchange for the issuance of voting trust certificates; and

Whereas, said 327,000 shares of stock have been issued to Depositors and the Depositors contemporaneously with the execution of this Agreement will transfer said 327,000 shares of stock to Trustees, and Trustees will issue voting trust certificates evidencing beneficial interests in this Trust to enrolled members of the Menominee Indian Tribe of Wisconsin (defined as those names which appear on "Final Roll—Menominee Indian Tribe of Wisconsin" as proclaimed by the Secretary of Interior November 26, 1957 and published at pages 9951-9972, FEDERAL REGISTER, December 12, 1957) or to the heirs or lawful transferees of deceased enrolled members, or to the Trustees of the Trust created by or at the direction of the Secretary of Interior of the United States of America for the benefit of minor and certain other members of the Menominee Indian Tribe; and

Whereas, the Plan which is the basis for the conveyance of the tribal property provides for the creation of this Trust, which is advisable and for the best interests of the members of the Menominee Indian Tribe and their lawful distributees, and is necessary in order to insure stability

of control, development of the policies and management of the Company, and to protect the collective interests in the Company.

Now, therefore, in consideration of the agreement and undertakings hereinafter made by the Trustees and other valuable consideration, the receipt of which is hereby acknowledged, the Depositors do hereby assign, transfer and set over unto the Trustees, and their successors, 327,000 shares of common stock of the Company, evidenced by Certificate No. ....., and the Trustees do hereby acknowledge that said stock has been assigned, transferred and set over to them, and they do hereby covenant and agree that they have received and will hold said stock, and such additional common stock or other securities of the Company as may hereafter be transferred, assigned and set over unto them as hereinafter provided, in trust (to be held, used, transferred and disposed of by them), for the following uses and purposes, and upon the following terms and conditions:

I. Deposit of Stock

1. The Depositors hereby sell, assign, and transfer to the Trustees and their successors, the full legal title to 327,000 shares of common stock of Menominee Enterprises, Inc., and agree that the Trustees and their successors shall have and be vested with all of the rights and powers of the owner and holder of such stock, with full rights and powers of whatever nature necessary to enable the Trustees to exercise the powers vested in them under this agreement.

2. In exchange for the stock transferred by Depositors to Trustees, the Trustees shall issue voting trust certificates (herein called "Trust Certificates"), to the enrolled

members of the Menominee Indian Tribe or to the heirs or lawful transferees of deceased enrolled members, or to the Trustees of the Trust created by or at the direction of the Secretary of Interior for the benefit of certain members of the Menominee Indian Tribe, all as designated in a Distribution Schedule prepared or approved by the Secretary which Depositors will furnish contemporaneously with the execution of this Agreement or shortly thereafter, which Distribution Schedule set forth the amount of distribution to each Beneficiary. The Trustees, in making the initial distribution of voting trust certificates to Beneficiaries, may rely wholly on the instructions as to amounts and distributees contained in the Distribution Schedule, and shall not be liable or responsible to any person on account of the distribution in accordance therewith. The Trust Certificates shall be signed by or on behalf of the Trustees, and shall be substantially in the form hereto annexed, marked Exhibit "A" and made a part hereof.

3. The term "Beneficiary," as used in this agreement, shall mean a holder of record on the books of the Trustees of Trust Certificates issued hereunder, and shall be construed to mean and include not only such holders and owners acting in their own right, but also any person, association or corporation holding Trust Certificates in a representative or fiduciary capacity. In no event shall the term "Beneficiary" include any person who has only a beneficiary interest in Trust Certificates held by others hereunder.

4. The term "voting stock" as used in this agreement shall mean common stock and any other stock carrying voting rights upon the election of directors of the Company, and includes any stock upon the happening of any contingency, and any stock which may be or become convertible into such voting stock.

II. Dividends

III. Powers of Trustees

1. The Trustees, in respect of the stock held by them hereunder, are hereby vested as owners of such stock (without limitation except as herein otherwise expressly provided) with all of the rights, powers, and privileges of every kind and character, of owners thereof, including, without limiting the generality of the foregoing (a) the right to vote the same, as hereinafter provided, for every purpose, (b) the right to become parties to or prosecute or intervene in any suits or other legal or administrative proceedings affecting the stock deposited hereunder, the Company, of the powers, duties or obligations of the Trustees, and (c) the right to transfer all or any part of the Company's stock held hereunder into their names as Trustees or into the name "The Trustees of Menominee Common Stock and Voting Trust."

2. In voting the stock held by the Trustees hereunder, the Trustees shall exercise their best judgment from time to time to vote for suitable directors, to the end that the affairs of the Company shall be properly managed, and in voting on or consenting to other matters which may come before them at any stockholders' meeting or otherwise, the Trustees shall exercise like judgment.

3. The Trustees, individually or otherwise, may hold common stock or other securities of the Company or Trust Certificates issued hereunder, but no Trustee may vote for himself or any other Trustee as a director of the Company. The Trustees individually or any firm of which any of them is a member, or a corporation in which any is a stockholder or officer or in which any Trustee may be otherwise in-

terested, may contract with the Company or be or become pecuniarily interested in any matter or transaction to which the Company may be a party, as fully as though such individual Trustee were not a Trustee hereunder.

4. Except as otherwise herein provided, the affirmative vote of five Trustees entitled to act shall be required to take any action. The Trustees may act by mail vote or at a meeting, or a combination of both. A quorum of four actually present shall be required for a meeting.

5. The Trustees may incur and pay all expenses and disbursements which the Trustees may deem necessary or proper in and about exercising the powers and authority given to or vested in the Trustees by this agreement, and shall be entitled to reimbursement from the Company for any expenses and obligations incurred by them by reason of the Trust, including travel expenses. To the extent such expenses are not so paid or reimbursed, the shares deposited or held hereunder and all other assets and property received or held hereunder are charged with the payment of such expenses. The Trustees shall not be entitled to compensation for their services as Trustees. The obligations and agreements of the Trustees shall not be binding upon the Trustees personally, but shall bind solely the stock and other assets and property in the hands of the Trustees.

6. The Trustees shall keep proper records of their receipts and disbursements and, from time to time prior to termination of the Trust, may issue and mail financial reports to the Beneficiaries and shall issue and mail annual financial reports to the Beneficiaries within thirty (30) days after the final adjournment of each annual meeting of the stockholders of the Company. Such financial reports

shall include information of such nature and scope as the Trustees shall deem relevant and appropriate under the circumstances. Unless legal proceedings questioning the adequacy and accuracy of such financial reports shall be fully instituted within one hundred eighty (180) days after the mailing of any such report, such report as against all parties interested therein shall be conclusively presumed to be in all respects correct. The books and records of the Trustees containing the accounts and the names of Beneficiaries shall at all reasonable times be open to inspection by the Beneficiaries for any proper purpose.

7. The Trustees may appoint a Secretary and an Assistant Secretary (herein referred to as the "Secretary" and "Assistant Secretary"), either of whom may but need not be a Trustee or an officer or employee of the Company. The Trustees may remove and replace at any time the person so appointed as Secretary or Assistant Secretary and may pay reasonable compensation to the Secretary and/or the Assistant Secretary. It shall be the duty of the Secretary to keep the minutes of the meetings of the Trustees and to maintain a record of transactions hereunder, to act as treasurer, and to perform such other duties as herein provided or as may be required by the Trustees. The Assistant Secretary shall act in place of the Secretary in taking any action or performing any duties herein required to be taken or performed by the Secretary whenever the Secretary shall be incapacitated, absent, or for any other reason unable to act. In the event no Secretary or Assistant Secretary shall be appointed or acting hereunder, one or more of the Trustees shall act in place of the Secretary in taking any action or performing any duties herein required to be taken or performed by the Secretary, and in such event all refeernces herein to the Secretary shall be deemed to mean and refer to such Trustee or Trustees.

IV. Sale of the Stock By the Trustees

1. The Trustees may, by affirmative vote of five Trustees, concurred in by Beneficiaries holding Trust Certificates representing in the aggregate at least sixty-six and two-thirds percent (66 2/3%) of all the shares of stock deposited hereunder, direct or make a sale as a unit of all or any part of the shares of stock deposited hereunder for such price and upon such terms or in exchange for such other property as the Trustees shall agree upon: *Provided*, That for a period of thirty (30) years, commencing with the date of this instrument, no such sale shall be made without the prior consent of the State Conservation Commission of Wisconsin and approval by the Governor of Wisconsin.

2. Such sales may be made whether or not any dissenting Trustees or dissenting Beneficiaries shall approve the sale. Dissenting Beneficiaries shall have no rights of appraisal.

3. In the event of a sale of fifty percent (50%) or more of all the shares of stock deposited hereunder, this trust shall terminate. Upon termination the proceeds of said sale together with the unsold shares shall be distributed pro rata among the Beneficiaries holding Trust Certificates. The Trustees shall be authorized to distribute cash in lieu of a fractional share of stock and to decrease the pro rata cash distribution of any shareholder to whom a whole number of shares, in excess of his exact pro rata share, is distributed.

4. If less than fifty percent (50%) of all the shares of stock deposited hereunder are sold, the proceeds of such sale shall be used to redeem outstanding Trust Certificates on a pro rata basis.

V. Transfer of Trust Certificates

* * *

VI. Election of Trustees and Vacancies

1. There shall be seven Trustees hereunder, four of whom shall be enrolled members of the Menominee Indian Tribe of Wisconsin, as defined hereinbefore, or blood descendants of such members, and three of whom shall be persons other than such members or descendants. The term of office of all Trustees other than initial Trustees shall be seven years. There shall be a meeting of Beneficiaries annually immediately preceding the annual meeting of shareholders of the Company, notice of which annual meeting of Beneficiaries shall be given at the same time and in the same fashion as notice of the shareholders' meeting. At such annual meeting of Beneficiaries each year one Trustee shall be elected for a seven-year term by a majority of the votes cast in person or by proxy by the Beneficiaries. To be eligible for election as Trustee, a person must be named in a nomination petition signed by the holders of not less than 2 percent of the outstanding voting trust certificates and presented to the Board of Directors of the Company at least 15 days prior to the date set for the annual meeting of Beneficiaries. The Board of Directors shall prepare a ballot to be circulated along with proxies to all Beneficiaries, containing the names of all persons so nominated, and the Board of Directors shall conduct the election of the Trustee, under such reasonable rules and regulations as they may prescribe. The persons named above as "Trustees" shall be the initial Trustees for terms from one through seven years, and the term of office of each shall be determined at the first meeting of the Trustees by drawing lots, there being one term expiring each year at the time of the annual meeting of Beneficiaries, for the ensuing seven years.

2. Each Trustee shall hold office until he resigns, dies, or becomes incapacitated, or until his term expires as provided above and his successor shall have been duly

elected. Any Trustee may resign at any time by mailing or delivering a written notice of his resignation to each of the remaining Trustees. Vacancies created by resignation, death or incapacitation shall be filled by a new Trustee chosen by a majority vote of the remaining Trustees to serve for the unexpired term.

VII. Amendment and Termination

1. This agreement may be amended from time to time by the affirmative vote of five Trustees in a meeting, the notice of which includes notice of such amendment: *Provided, however,* That if any amendment adopted by the Trustees effects a substantial change in the rights of Beneficiaries, such amendment shall not be effective unless approved in writing (1) by the Beneficiaries holding Trust Certificates representing a majority of the shares of stock then held hereunder, and (2) by the Wisconsin Department of Securities. Notice of all other amendments shall be given promptly after adoption to all Beneficiaries.

2. This agreement shall continue in full force and effect for a period of ten (10) years from the date hereof, and shall then be renewed automatically for a second ten-year period and a third ten-year period, unless at the annual meeting of Beneficiaries next preceding the end of the first or second ten-year period, the Beneficiaries holding Trust Certificates representing in the aggregate at least 50 percent of all the stock then held hereunder shall affirmatively vote to terminate the agreement at the end of such period: *Provided, however,* That if the permissible duration of this agreement shall be limited to any lesser period by operation of law, this agreement shall terminate upon the expiration of such lesser permitted period of duration. In the event this agreement shall be renewed automatically as hereinabove provided, the Trus-

tees then in office shall continue serving for the term for which elected and their successors shall be elected as provided in Part VI, paragraph 1.

3. In the event this agreement shall be terminated as hereinabove provided ten (10) years from the date hereof, the Trustees shall vote the stock hereunder to amend the Articles of Incorporation of the Company to provide for the same restrictions on transfer of stock to the Company as are hereinabove provided restricting the transfer of Trust Certificates, such restrictions to terminate January 1, 1981.

4. Whenever this agreement shall terminate, the rights of all parties hereunder shall terminate and the Trustees shall make delivery or distribution of such stock, assets or other property of the trust, pro rata to the person or persons whose names then appear upon the books of the Trustees as the owners of the respective Trust Certificates and, in making such delivery, the Trustees shall be fully protected notwithstanding they do not require surrender or production of the Trust Certificates.

VIII. NOTICES

1. Whenever a meeting of the Beneficiaries as a class shall be requested in writing by the Trustees or by Beneficiaries who will be entitled to cast at least ten percent (10%) of all the votes which would be entitled to be cast at such meeting, the Secretary shall call such meeting within thirty (30) days and shall promptly give notice to all persons entitled to be present at such meeting, specifying the time and place of holding the meeting (which shall be at a place and time convenient to as many of the Beneficiaries as possible) and the business proposed to be transacted. The Secretary shall likewise give notice of all meetings of the Trustees to each Trustee, specifying the time and place of holding the meeting and the business

proposed to be transacted. Such notices shall be given not less than ten (10) days before the time of holding the meeting, but notice may be waived in writing or by presence at the meeting.

2. Any and all notices herein provided for shall be in writing unless such requirement be waived, and may be personally delivered or shall be given by mailing such notice to the address of the person or corporation to whom such notice is given as shown upon the records of the Trustees and, in the event that notice is given to the Secretary, it shall be given to him at the Office of the Company. In the case of any requirement in this agreement that such notice be for any number of days, such time shall run from the personal delivery thereof or from the mailing of such notice, exclusive of the day of mailing.

IX. VOTING

* * *

X. Miscellaneous

1. The Trustees may construe this agreement, and their construction made in good faith shall be conclusive and binding upon the parties hereto, and the Trustees may make such rules and regulations as in their judgment shall be deemed necessary or proper to carry out the same properly and effectively.

* * *

In witness whereof, the parties have hereunto affixed their signatures and seals as of the day and year first above written.

Depositors Coordinating
and Negotiating Committee of the Menominee Indian Tribe.
George W. Kenote,
Gordon Dickie,
Mitchell A. Dodge.

APPENDIX E

FINAL JUDGMENT
(Record Pages 1642-1644; Formal Parts Omitted)

On the basis of the Wisconsin Supreme Court's Decision of June 29, 1973, and its Decision on the Motion for Rehearing filed August 14, 1973, and upon motion being duly made under Section 274.36, Wisconsin Statutes, by Vance M. Waggoner, one of the Attorneys for the Defendant, N. E. Isaacson & Associates, Inc., and by Gilbert W. Church, one of the Attorneys for the individual Defendants;

IT IS ORDERED, ADJUDGED AND DECREED, That the Menominee Common Stock & Voting Trust is a valid Voting Trust under Section 180.27, Wisconsin Statutes, and under controlling Federal law and the United States Constitution; and,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That during the term of the Menominee Common Stock & Voting Trust, and any extension thereof, the Voting Trustees have the power and authority to approve the sale of land by Menominee Enterprises, Inc. to non-Menominees, and the approval of the holders of Voting Trust Certificates is neither necessary nor required in order to validate such sales of land to non-Menominees; and,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That the Lis Pendens filed in this action on October 25, 1971, in the Office of the Register of Deeds for Menominee County, Wisconsin, at 3:45 P.M., in Volume 20 of Records, at Pages 240 through 257, as Document No. 6410, be, and the same hereby is, declared null and void; and,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That the Clerk of Courts for Menominee County, Wisconsin, shall certify a copy of this Final Judgment for filing with the Register of Deeds for Menominee County, Wisconsin, all in accordance with the provisions of Sections 281.03(3) and 266.22, Wisconsin Statutes; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That the Injunction against further sales of land to non-Menominees, previously entered by this Court against the above-named Defendants, and each of them, be, and the same hereby is, vacated; and,

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, That the Complaint and Supplemental Complaint of the Plaintiffs herein be, and the same hereby are, dismissed on their merits.

DATED This 7th day of September, 1973.

BY THE COURT:
/s/ *William J. Duffy*
William J. Duffy, Circuit Judge